

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

)
Amendment of Section 73.606(b),
Table of Allotments,
TV Broadcast Stations.
(Kansas City, Missouri)

) MM Docket No. 96-134
) RM-8817
)

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**COMMENTS
OF
MILLER BROADCASTING, INC.**

Comes now **MILLER BROADCASTING, INC.** ("Miller"), by Counsel, and hereby respectfully submits its comments in response to the Notice of Proposed Rule Making (DA 96-945, released June 21, 1996) ("NPRM"), in the above-captioned Rule Making Proceeding. The NPRM proposes, at the request of TV-32, Inc., petitioner, to substitute Channel 29 at Kansas City for channel 32 at Kansas City. With respect to the interests of Miller herein, which are identified hereinbelow, Miller submits the following:

Background

1. Miller is the Licensee of Television Station KMCI, which has for several years operated, and currently operates, on Channel 38 at Lawrence, Kansas, in the Kansas City, Missouri market. It is therefore an interested party in this proceeding, which affects the channel allotments in the Kansas City market.

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2. The NPRM proposes to substitute UHF Television Channel 29 for UHF Television Channel 32 at Kansas City, Missouri, and to modify the Construction Permit for Television Station KCWB, Kansas City, Missouri, to specify operation on Channel 29, as requested by TV-32, Inc. This would entail a change of coordinates for Channel 22 at St. Joseph, Missouri as well. The NPRM states that the Channel change is not precluded by the freeze on television allotments in certain markets, including Kansas City.¹ This is because the NPRM merely proposes a change in the frequency of an allotment already in the Table of Allotments, not a new allotment. It is also claimed, at paragraph 2 of the NPRM, that the substitution of Channel 29 for Channel 32 at Kansas City will not "reduce the amount of spectrum currently authorized for possible ATV use in Kansas City". It is the position of Miller that this last assumption in the NPRM is not correct; that the allotment in fact conflicts with a previous proposal for use of Channel 29 at Lawrence, Kansas for advanced television use by Miller; and that this proceeding, therefore, must be held in abeyance pending resolution of the already-initiated advanced television allotment proceeding.

**The TV-32 Proposal Affects the Commission's Advanced
Television Channel Allotment Plan**

3. The Commission's staff must consider the effect that the TV-32 proposal will have on the reallocation of channels to accommodate digital television. On July 25, 1996, the Commission adopted, but has not as of this writing released, the Sixth Further Notice of Proposed Rule Making, Advanced Television Systems and Their

¹ See, *Order, Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, 52 Fed. Reg. 28346, released July 29, 1987.

Impact Upon the Existing Television Broadcast Service (MM Docket No. 97-268) ("Sixth Further Notice"). The *Sixth Further Notice* will include a comprehensive proposed television channel allotment plan for the transition of the television broadcast service from analog NTSC to digital format. See, *FCC News Release, "Commission Begins Final Step in the Implementation of Digital Television (DTV)," July 25, 1996, at 1*. The "core spectrum" for digital television includes channels 14-36. If the *Sixth Further Notice* proposes a mutually exclusive use for Channel 29, then that portion of the *Sixth Further Notice* must be treated as a counterproposal to that contained in the instant NPRM. Under applicable Commission precedent, the relative merits of each proposal for the use of Channel 29 must then be considered before a final decision could be reached in this proceeding.

As the News Release states:

The Commission also provided a draft DTV Table of Allotments. This Table, which shows how digital frequencies might be allotted in individual markets, is based on the principles of accommodating all eligible broadcasters, replicating existing service areas, and sound spectrum management. While the Commission expects the final DTV Table of Allotments to be based on these principles, the Table included in the Further Notice is a draft, and revisions are anticipated.

Obviously, the Commission must retain the flexibility to consider alternative plans during the pendency of the Sixth Further Notice.

4. Furthermore and regardless of the Commission's proposed allotment plan for the entire United States to be considered in the context of the Sixth Further Notice, a mutually exclusive use, and thus a counterproposal for Channel 29 in the Kansas City market, has already been proposed, which has not been considered in this NPRM, nor addressed by the petitioner in this proceeding to date. On January 13,

1995, the Association for Maximum Service Television, Inc. ("MSTV"), submitted, in MM Docket 87-268 an allotment plan for the transition to digital television which proposes to substitute Channel 29 for KMCI's Channel 38 at Lawrence, Kansas. Channel 29 cannot be allotted to both Lawrence, Kansas and Kansas City, Missouri due to spacing limitations, both cities being in the same market. If the *Sixth Further Notice* adopts the MSTV plan for the substitution of Channel 29 for Channel 38 in Lawrence, then the TV-32 proposal would constitute a counterproposal to the previously filed MSTV allotment plan. Even if the Sixth Further Notice does not adopt the MSTV plan, however, the MSTV plan remains a counterproposal to the instant Channel 29 allotment proposed in the NPRM in this proceeding. Indeed, the News Release announcing the Sixth Further Notice states, in part, as follows:

The Commission [in the Sixth Further Notice] also requested comment on an alternative option that would distribute DTV allotments over the entire existing TV spectrum and that would provide for the recovery of spectrum at the end of the transition. This option has been suggested by the Association of Maximum Service Television. The Commission sought comment on whether this approach would provide for a degree of improved service area replication and less interference and whether it would have less of an impact on low power television and TV translator stations. The Commission requested comment on the costs and benefits of each of these spectrum options.

Therefore, the MSTV allocation plan is specifically included in the Sixth Further Notice as an option. If it is adopted as proposed, it would include Channel 29 as the DTV channel for Miller at Lawrence, Kansas, thus precluding NTSC use thereof at Kansas City by the petitioner herein.

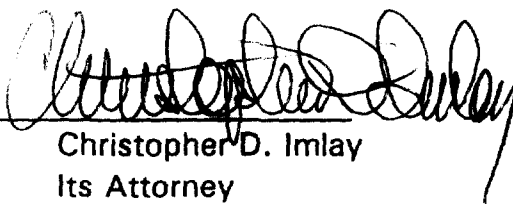
5. In light of the foregoing, the Commission should withhold any action on this proceeding, thus to carefully consider any change to the television Table of

Allotments which could ultimately restrain the flexibility of the Office of Engineering and Technology and interested parties from crafting an overall allotment plan. The massive undertaking necessary to reallocate television channels throughout the United States to accommodate digital television service should not be further complicated by piecemeal changes to the Table of Allotments. Furthermore, the allocation change proposed in this proceeding is not subject to consideration in the abstract; it must be evaluated in the light of the MSTV allocation plan, which proposes the use of Channel 29 as the DTV channel for KMCI at Lawrence, Kansas. Such is a counterproposal.

Therefore, the foregoing considered, Miller Broadcasting, Inc. respectfully requests that this proceeding be resolved following, and consistent with, the Sixth Further Notice of Proposed Rule Making in MM Docket 87-268; and that no action be taken herein which would prejudice the availability of Channel 29 at Lawrence, Kansas, as per the MSTV channel allotment plan for advanced television.

Respectfully submitted,

MILLER BROADCASTING, INC.

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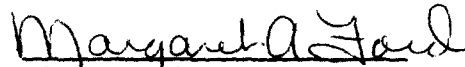
(202) 296-9100
August 12, 1996

CERTIFICATE OF SERVICE

I, Margaret A. Ford, do hereby certify that on this 12th day of August, 1996,
I have served a copy of the foregoing "Comments" first-class, postage-prepaid, on the
following:

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